IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

JUDGMENT

Smt. Phuli Devi Vs. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL NO.267/1996
against the order dt.26.4.1996 passed
in S.B.Civil Writ Petition No.1109/96.

Date 24.03.2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. Rajesh Joshi for the petitioner.
Mr. L.R. Upadhyay, Addl. Government Advocate.

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Heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 26th April, 1996 by which the writ petition filed by the petitioner appellant was dismissed on the ground of latches.

The facts of the case are that the petitioner had applied for a mining query at village Bala on 27.11.1991 for an area measuring 100 x 100 meters. Since the application was not

considered within the period prescribed, it was deemed to have been rejected. A revision petition was preferred before the State Government, which was allowed by order dated 21.11.1992 and the matter was sent back to the original authority. In pursuance of the remand, the application was again rejected on 10.2.1993. No grievance was raised against that rejection until filing of the writ petition on 5.4.1996 that is to say until after lapse of more than 3 years.

The petition was filed inter alia on the ground that after the grant was refused in favour of the petitioner by order dated 29th March, 1994 a grant has been made in favour of one Arjun Singh, who was similarly situated person and, therefore, it was a case of hostile discrimination in the matter of grant of mining lease.

The learned Single Judge opined that since the petitioner delayed for more than three years in filing the writ petition and the delay has not been explained, the petition does not

deserve to be considered on merit. Consequently, the writ petition was dismissed on the ground of delay and also with the observation that there is no merit in the petition.

While issuing notice of appeal on 27.5.1996 leave was granted to the petitioner to file application for additional evidence drawing the attention of the Court to eight similarly situated cases, where applications were made under the old policy for obtaining lease of extraction of granite, but the State Government processed the same and ultimately issued allotment orders despite the fact that the applications were not made under the new policy.

In pursuance of this direction, an application under Order 41 Rule 27 was moved on 11.7.1996 along with the additional documents Annex.A to E of which Annex.A, B, D and E were alleged to be the orders issuing grants in favour of similarly situated persons in the like circumstances. Annex.C is only an order of corrigendum.

Therefore, in all, four documents were placed by the learned counsel for the appellant on record which according to him are grants made in favour of similarly situated persons while he was denied the grant.

We may notice that Annex.A filed with the application under Order 41 Rule 27 was the same which was placed as Annex.4 to the writ petition.

From the perusal of the material on record, it is apparent that all the grants, to which the petitioner has referred, were made in favour of those persons who have prosecuted their remedies expeditiously after their applications were rejected in the first instance as the petitioner's application after their applications were originally rejected by the competent authority, as in the case of the petitioner.

In these circumstances, it is apparent that there is no discrimination by the respondents in dealing with appellant-petitioner's case. Those who pursued their

remedy under law got the relief, and those like petitioner, who did not availed remedy available to them under law remained satisfied with order passed by competent authority. It is not a case of discrimination practised by any statutory authority, but is a case of petitioner's own in action in not pursuing his remedies, which he could have also availed. No premium can be placed on petitioner's own latches by considering it a case of hostile discrimination to warrant invoking of extra-ordinary jurisdiction.

We are of the opinion that no illegality was committed by the learned Single Judge in refusing the discretion to exercise the extra ordinary jurisdiction on the ground of latches.

The appeal, therefore, fails and is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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